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pany and others. Judgment for plaintiff, and defendants bring error. Affirmed.

*Harrison & Long*, of Lynchburg, for plaintiffs in error.

*Caskie & Caskie*, of Lynchburg, and *S. W. Williams*, of Roanoke, for defendant in error.

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SOUTH NORFOLK LAND CO. et al. v. TEBAULT et al.

March 13, 1919.

[98 S. E. 679.]

**1. Corporations (§ 189 (½)\*)—Action by Minority Stockholders—Nature of Action.**—Minority stockholders' bill, against the corporation and majority stockholders, to enforce collection of debts due the corporation and charging management of corporation in the interest of the president, diversion of corporate funds, and refusal to hold regular and necessary meetings of stockholders and directors, is not an action for dissolution of a corporation, under Code 1904, § 1105a, par. 15, and is not demurrable for failure to state facts bringing action within such statute.

**2. Corporations (§ 189 (10)\*)—Rights of Minority Stockholders—Action—Receiver.**—Where corporation has been successfully managed, big dividends have been paid, and the assets have greatly increased in value, the business of the corporation will not be placed in the hands of a receiver on application of minority stockholders, who have been deprived of participation in the management of the corporation, but court will retain jurisdiction of the case, with leave to minority stockholders to apply for relief, if necessary.

**3. Corporations (§ 189 (14)\*)—Action by Minority Stockholders—Costs.**—Where minority stockholders' action against corporation and majority stockholders was made necessary by the misconduct of the president in refusing to permit minority stockholders to participate in the affairs of the corporation, the costs of the action were rightly awarded against president.

**4. Costs (§ 237\*)—Appeal—Reversal in Part.**—In minority stockholders' action against corporation, where injunction stopping the company's business is dissolved on appeal, but jurisdiction of the case is retained by the court, so that minority stockholders can apply for relief, if necessary, the costs on appeal will be taxed against the corporation and paid out of its assets.

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Appeal from Law and Chancery Court of City of Norfolk.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Suit by Jennie T. Tebault and others against the South Norfolk Land Company and others. Decree for plaintiffs, and defendants appeal. Reversed in part, and in part affirmed.

*Wolcott, Wolcott, Lankford & Kearn, J. T. Lawless, and T. H. Synon*, all of Norfolk, for appellants.

*John B. Jenkins, Jr., G. Tayloe Gwathmey, and E. R. F. Wells*, all of Norfolk, for appellees.

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VIRGINIA TALC & SOAPSTONE CO., Inc. v. HURKAMP.

March 13, 1919.

[98 S. E. 681.]

**1. Work and Labor (§ 24 (1)\*—Issues, Proof and Variance.**—In assumpsit, though declaration contained only common counts, plaintiff was entitled to recover upon proof of a special, unbreached, fully executed contract calling for the payment of money as compensation for services to be performed.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 27.]

**2. Appeal and Error (§ 1002\*—Conclusion Based on Conflicting Evidence—Review.**—Question of fact having been concluded against defendant by verdict based on conflicting evidence, court on appeal cannot disturb conclusion.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 621.]

**3. Evidence (§ 116\*—Explanatory Statements—Admissibility.**—Where plaintiff, without objection, gave a narrative of his connections with defendant company, and stated that he had an agreement with defendants' president by which plaintiff was to be paid \$300 a month for a year, but that he had accepted \$1,600 in full for the first eight months, his further testimony as how it was that he accepted \$1,600 was relevant, to clarify his narrative.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 299.]

**4. Witnesses (§ 383\*—Impeachment—Contradictory Statements.**—Where defendant's president, on examination in chief, had testified that he had not made contract of employment, and on cross-examination denied that he had stated to impeaching witness that he had made the contract, this was not collateral or immaterial, but a matter directly in issue, and testimony of impeaching witness that president had made a statement, in conflict with testimony, was admissible.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 966.]

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**5. Trial (§ 251 (2)\*—Instruction on Matters Not in Issue.**—Where

\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.